

Patently obvious

by the St. Louis Post-Dispatch

In the past few years, the U.S. Patent Office has issued a patent for an intergalactic anti-gravity spaceship. It also issued a patent to a grade-school kid for a method of swinging on a swing sideways while yelling like Tarzan.

After decades of ignoring patent law, the Supreme Court is taking a series of cases that could limit such patent absurdity. Its first case, involving a lowly gas pedal extender; the justices tossed a ridiculous patent into the trash, as well they should have.

For years, automakers have been placing electronic sensors on gas pedals to adjust car speeds. For years, manufacturers also have been making pedal extenders for drivers with short legs. A Pennsylvania company, Teleflex, put a sensor on the extender pedal. It was an obvious move, and obvious new uses for existing technology aren't supposed to be patentable.

The Supreme Court clarified what "obvious" means: A device is obvious if a person with ordinary skills in the same field could have come up with the same thing. "Granting patent protection to advances that would occur in the ordinary course without real innovation retards progress," wrote Justice Anthony Kennedy. If the court applies such good logic to other cases, the justices will free America's true innovators from the shackles of undeserved patents. That should help consumers who will benefit from new inventions and vigorous competition.

For years, the U.S. Patent Office has been a rubber stamp. Patents guarantee an inventor a temporary monopoly, usually 20 years. A monstrous backlog of more than 700,000 cases means that patent applications get inadequate examination. A poorly designed compensation system rewards the patent officers more for approving patents - however absurd they may be - than for rejecting them.

The ruling should free up competition in many industries - software, for instance - in which existing technologies simply are combined in different ways. Microsoft and many other high-tech companies had urged the court to ease the patent standard. Vonage, the Internet phone company, hopes to use the case to resurrect itself. One of its main competitors, phone giant Verizon, wants the courts to shut Vonage down for allegedly violating Verizon patents. The losers in that case would include all customers of Vonage.

About 20 percent of the genes in our bodies are patented now. Scientists must buy licenses before they can cure disease based on those gene functions. That also discourages true innovation and discovery.

After decades of ignoring patent law, the Supreme Court is taking a series of cases with an apparent view to

straightening out a nonsensical tangle. The Patent Office is hiring more examiners, which should help. But Congress also should get into the act. Patent law hasn't had an overhaul since the 1950s. It's time to bring it into the 21st century.

Reprinted from the St. Louis Post-Dispatch.

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